

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/939,526 Confirmation No.: 2484
Applicant(s): David J. Boothby Art Unit: 2121
Filed: August 24, 2001 Examiner: Maria N. Von Buhr
Title: SYNCHRONIZATION OF RECURRING RECORDS IN INCOMPATIBLE
DATABASES

Docket No.: 042933/326776
Customer No.: 00826

Via EFS Web Filing
Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO RESET A PERIOD FOR RESPONSE DUE TO LATE RECEIPT OF A
PTO ACTION**

This petition is filed with respect to the Office Action dated February 4, 2009 in accordance with the standards set forth in MPEP § 710.06. Based on the ensuing comments and evidence set forth with the petition, it is respectfully requested that the Examiner reset the response period for the outstanding Office Action due to late receipt.

I. The Instant Petition is Filed Within Two Weeks of Discovery of the Office Action

The Office Action issued on February 4, 2009 ("the Office Action") was never received in the mail at the correspondence address of the attorney of record (Alston & Bird LLP) and the existence of the outstanding Office Action of February 4, 2009 was not discovered by the attorney of record until June 2, 2009, when Kay Costanza, a paralegal employed by the attorney of record, checked the status of the application on the USPTO's PAIR system. The instant petition is filed within two weeks of the date that the Office Action was discovered

II. A Substantial Portion of the Set Reply Period has Elapsed

At the time of discovery by Ms. Costanza, the entirety of the one month reply period set forth in the Office Action had elapsed.

III. This Petition Includes Evidence Showing the Date of Discovery of the Office Action and a Statement Setting Forth the Date of Receipt of the Office Action

Attached to this petition are the following exhibits establishing that the Office Action was

not timely received and that the attorney of record did not become aware of the Office Action until Ms. Costanza until June 2, 2009:

Exhibit A comprises a statement of facts from Ms. Costanza detailing that Ms. Costanza was responsible for handling the takeover of the application file for the instant application from the previous attorney of record and first became aware of the Office Action on June 2, 2009 when she checked the application's status on the USPTO's PAIR system. At that time the docketing department for the attorney of record had not received and was not aware of the Office Action.

Exhibit B comprises an email sent from Ms. Costanza to the docketing department for the attorney of record on June 3, 2009 following discovery of the Office Action to inform the docketing department of discovery of the Office Action and to request the docketing department to run a report of the docketing database for the attorney of record (IPMaster) for other office actions received and docketed in the same time frame as the Office Action should have been received by the attorney of record.

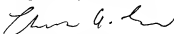
Exhibit C comprises a copy of the Office Action with a "Docketed Due Date" stamp indicating that the Office Action was docketed on June 3, 2009 in response to the email of Exhibit B.

Exhibit D comprises the IPMaster docketing sheet for attorney Charles A. ("Drew") Leyes, the attorney primarily responsible for prosecution of the instant application at Alston & Bird LLP, for the week of March 4, 2009 when the response period for the Office Action was set to expire. As shown on the docketing sheet, the response to the Office Action for instant application is not listed on the docketing sheet. If the Office Action had been received by the docketing department for Alston & Bird, the response deadline would have been entered into IPMaster according to the standard practice of the docketing department and would have been reflected on the docketing sheet for Charles A. Leyes.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the response date for the Office Action of February 4, 2009 be reset. It is not believed that additional extensions or fees are required for submission of this petition. However, in the event that additional extensions or fees are necessary to allow consideration of this petition, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any required fees are hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Charles A. Leyes
Registration No. 61,317

Customer No. 00826

ALSTON & BIRD LLP

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101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON JUNE 16, 2009.

LEGAL02/31364184v1

EXHIBIT A

EXHIBIT A – STATEMENT OF FACTS OF KAY COSTANZA

1. I am a patent paralegal employed by Alston & Bird LLP, the attorney of record for U.S. Pat. App. No. 09/939,526.
2. When U.S. Pat. App. No. 09/939,526 was transferred to Alston & Bird LLP from the former attorney of record, Fish & Richardson PC, I was responsible for handling the transfer of the application file to Alston & Bird LLP.
3. Alston & Bird filed a Revocation and New Power of Attorney for this application and I confirmed that it was accepted and that our firm's Customer Number was of record with the U.S. Patent and Trademark Office ("USPTO").
4. The number of takeover of files for the client-assignee of U.S. Pat. App. No. 09/939,526 was quite large, so for those applications of the client-assignee that had no current due dates, I held the files separate until an action from the USPTO was received.
5. On June 2, 2009, I performed a status check on the USPTO PAIR system for takeover files for this client that had not yet received an Office Action, including for U.S. Pat. App. No. 09/939,526, and discovered the Office Action issued on February 4, 2009.
6. Upon discovery of the Office Action of February 4, 2009, I informed Alston & Bird's Docketing Department by email on June 3, 2009, to determine whether it had ever received the Office Action of February 4, 2009 and was informed that they had not.
7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

6-16-2009



Kay Costanza, Paralegal

EXHIBIT B

Harris, Melinda

From: Costanza, Kay
Sent: Wednesday, June 03, 2009 7:56 AM
To: Docketing Dept - CLT
Cc: Leyes, Drew; Shaver, Linda
Subject: Nokia O.A. found in PAIR - Not in PATSY

Importance: High

Attachments: 09939526[1].pdf



09939526[1].pdf
(165 KB)

Docketing,

When doing a status check for Nokia takeover files that have not yet had an Office Action, I found this Office Action for Appl. No. 09/939,526 (A&B 042933/326776) dated February 4, 2009, with a one month reply date. Drew Leyes has now been assigned this application and is working on a response. Please check IPMaster and make sure the O.A. was not docketed there. This is most likely one of those actions that was stuck in behind an Office Action in an envelope to another law firm and that firm never notified the USPTO or forwarded it to us.

Also, can you run some type of report to show that O.A.'s were received and docketed for other files around that date, so if Drew wants to try to reset the date of save the EOT fees he will have some backup data. I know you have done this before when cases have gone abandoned.

Thanks.

Kay Costanza (kay.costanza@alston.com)
Administrative Patent Paralegal
Alston & Bird LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000

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EXHIBIT C



UNITED STATES PATENT AND TRADEMARK OFFICE

17L
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,526	08/24/2001	David J. Boothby	042933/326776	2484

826 7590 02/04/2009
ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER

VON BUHR, MARIA N

ART UNIT

PAPER NUMBER

2121

MAIL DATE

DELIVERY MODE

02/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Office Action Summary

Application No.

09/939,526

Applicant(s)

BOOTHBY, DAVID J.

Examiner

M.N. VON BUHR

Art Unit

2121

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on (*see Office action*).
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This application is a reissue of U.S. Application Serial No. 08/752,490 and is, therefore, accorded the benefit of the earlier filing date of 13 November 1996.
2. Claims 1-58 are pending in this application.
3. Examiner acknowledges receipt of Applicant's information disclosure statements, received 10/24/2002, 5/14/2003, 9/9/2003, 11/24/2003, 1/13/2005 and 3/23/2006, with accompanying reference copies. These submissions are in compliance with the provisions of 37 CFR 1.97. However, they have not been taken into consideration, pending response to the below requirement.

Requirement for Information

A. Applicant and the assignee of this application are required under 35 CFR 1.105 to provide the following information (see item a, below) that Examiner has determined is reasonably necessary to the examination of this application:

- a. Stipulate for the IDS(s) submitted 10/24/2002, 5/14/2003, 9/9/2003, 11/24/2003, 1/13/2005 and 3/23/2006 the following:
 - i. Identify 10-20 references considered to be the most relevant by Applicant and listed on the above-noted IDS(s). This requirement is deemed necessary, because of the large number of references cited, and because some of these references comprise hundreds of pages. This requirement is further deemed necessary, because a cursory review of these IDS(s) shows a number of references that do not qualify as prior art, such as the references designated AA-AN of the IDS filed 9/9/03.
 - ii. For those references comprising more than 50 pages, an identification of any such references as being considered to be the most relevant by Applicant should include an indication of the passages Applicant considers to be pertinent to the instant specification and claims.

b. In order to constitute a complete response to this requirement, Applicant is required to include stipulations for the 10-20 references cited in the above-noted IDS(s), as well as each and every IDS submission hereafter, as delineated in requirement a, above.

B. It is not foreseen that any additional documents will need to be filed in order to comply with this requirement. Accordingly, the fee and certification requirements of 37 CFR 1.97 are NOT waived for any reply submitted in response to this Office action.

C. Any supplemental replies responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

D. Applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. A complete reply to this requirement is required in response to this Office action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria N. Von Buhr whose telephone number is 571-272-3755. The examiner can normally be reached on M-F (9am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 571-272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/M.N. VON BUHR/

Primary Examiner, Art Unit 2121

MNVB
1/15/09

/Albert DeCady/

Supervisory Patent Examiner, Art Unit 2121

Application Number



Application/Control No.

09/939,526

Examiner

M.N. VON BUHR

**Applicant(s)/Patent under
Reexamination**

BOOTHBY, DAVID J.

Art Unit

2121

EXHIBIT D

DUE DATE

Attorney: Drew Leyes

From: 03/02/2009 to 03/09/2009

<i>Due Date</i>	<i>Action Due ClientName</i>	<i>Client/Matter (A&B) Client/Matter (BSPG)</i>	<i>Ctry</i>	<i>Appln No. Filing Dt</i>	<i>Atty/Agent/Paralegal</i>
03/09/2009	Information Disclosure Statement Due	042933 / 366580	US	61/120,933 12/09/2008	(BIII) GOSNG (Supr) GOSNG (Work) LEYED

Title:

Resp Atty LEYED Record Count 1